

## DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2014-02 IT  
November 20, 2014

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**ISSUE**

## Adjusted Gross Income Tax--Apportionment

A company ("Taxpayer") is seeking an opinion as to whether it is permitted to use an alternative apportionment method for receipts from a transaction.

Authority: [IC 6-3-2-2](#); [45 IAC 3.1-1-55](#).

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is a partnership engaged in constructing a bridge. The bridge spans the Ohio River. Taxpayer is responsible for financing, developing, designing, and managing the construction of the bridge. Taxpayer will also operate, maintain, and repair the bridge. However, Taxpayer will not own the bridge; instead, governmental entities in both states will own their respective portions of the bridge. Furthermore, Taxpayer will not own the materials used to construct the bridge. Instead, those materials will be owned by various subcontractors.

During the construction or maintenance of the bridge, Taxpayer expects to have 6-7 full time equivalent employees to fulfill the construction or maintenance of the bridge. Further, Taxpayer may have a minor amount of equipment used on-site for bridge construction. Taxpayer does not anticipate owning or leasing office space during the contract period. Instead, third parties will provide Taxpayer with necessary office space at no charge. However, the exact work locations or equipment locations are not known at this time. Furthermore, the work related to various milestone payments is due during construction of the bridge. The first payment is anticipated to be due in mid-to-late 2014.

**DISCUSSION**

Taxpayer requests that the department rule whether Taxpayer can use an alternative apportionment method. In particular, Taxpayer requests that the Department depart from a traditional cost-of-performance analysis and apply a ratio based on Indiana's portions of the project costs. In Taxpayer's request, Taxpayer noted that just over fifty-four percent of its costs would be incurred in Indiana while forty-six percent would be incurred in Kentucky. While the department acknowledges Taxpayer's cost breakdown, the department reserves all rights to verify the breakdown and make any necessary adjustments.

The receipts from construction of the bridge and the ongoing services would be attributed to Indiana pursuant to [IC 6-3-2-2\(f\)](#), which states:

Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

In addition, [45 IAC 3.1-1-55\(d\)](#) provides:

Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If the services are performed partly within and without this state, such receipts shall be attributed to this state based upon the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing

services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

In this case, Taxpayer asserts that it has relatively few employees—and, by extension, relatively little compensation—compared to the amounts that Taxpayer will receive over the lifetime of the contract. Furthermore, Taxpayer asserts that it would not be able to track the amount of time spent by the various independent contractors performing work on Taxpayer's behalf.

Indiana law does permit variance from ordinary statutory apportionment in certain cases. [IC 6-3-2-2\(l\)](#) states:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) for a taxable year beginning before January 1, 2011, the exclusion of any one (1) or more of the factors, except the sales factor;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In this particular case, Taxpayer also requested identical alternative apportionment treatment from Kentucky. Kentucky denied the request. Accordingly, in order to fairly reflect Indiana-source income and to preserve the taxability of one hundred percent of Taxpayer's receipts, Indiana respectfully denies Taxpayer's request for alternative apportionment

### **RULING**

Taxpayer is not permitted to use an alternative apportionment method based on the costs associated with construction of the bridge.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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